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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,344	09/10/2003	Darin Barri	MAT 3H5	5151
23581	7590	09/15/2006	EXAMINER	
KOLISCH HARTWELL, P.C. 200 PACIFIC BUILDING 520 SW YAMHILL STREET PORTLAND, OR 97204			CEGIELNIK, URSZULA M	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,344

Applicant(s)

BARRI ET AL.

Examiner

Urszula M. Cegielnik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 05/05/06;07/03/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 30-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Speasl et al.

Speasl et al. disclose a toy (anything can be considered a toy that gives amusement to a user); a first sensor (404a, which senses temperature through a channel) responsive to an environmental factor (*such as temperature*) in a first location; a second sensor (404a, which senses temperature through a different channel) responsive to an environmental factor (*such as temperature*) in a second location (col. 4, line 67 through col. 5, lines 1-3. *Reference part 404a, since it is located within pod 201, is protected from air exposure in that a pod is a container*); an output device; and a processor (418) coupled to the first (404a, through a channel) and second sensors (404a, though a different channel) capable of comparing the environmental factor in the second location and activating the output device (*such as an audible alarm when a threshold difference in the environmental factors is sensed - col. 7, lines 34-43*); the environmental factor is humidity (col. 6, lines 1-10); the airflow across the sensor is

substantially restricted (*the airflow across the sensor restricted from the ambient environment outside the container*).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20, 23, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smirnov (US Patent Application Publication No. 2001/0041496) in view of Speasl et al. (US Patent No. 6,901,971).

Smirnov discloses a toy comprising a breath sensor (paragraph 0077, lines 1-3); an output device (paragraph 0033, lines 1-3); a speaker (4); the processor (21) activates the speaker (4) when the electrical characteristic of a sensor indicates the presence of breath (paragraph 0077, lines 1-7); the breath sensor inherently has an electrical characteristic in order to operate in conjunction with the processor; and a processor (21) operatively coupled to the breath sensor (paragraph 0077, lines 1-7) and to the output device (paragraph 0033, lines 1-3) wherein the processor (21) is adapted to cause the toy to interact with a user (paragraph 0045, lines 1-12); the processor (21) is further adapted to cause the toy to exhibit a behavior in response to user input (paragraph 0048, lines 1-10); the processor is capable of comparing electrical characteristics of sensors, since digital communication makes use of electrical signals; the processor (21) is further adapted to cause the toy to elicit behavior in a user and

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detect the behavior (paragraph 0048, lines 1-10); the breath sensor includes a humidity sensor (paragraph 0077, lines 1-3); a reference sensor (*paragraph 0077, lines 3-5, providing a corresponding sensor connected to a processor; since the corresponding sensor is connected to a processor [which stores digital values] it is inherently capable of detecting an ambient value*); the reference sensor inherently has an electrical characteristic in order to operate in conjunction with the processor; the breath sensor includes a temperature sensor (5), and the toy is a stuffed figure (*e.g. a teddy bear*); a musical toy (the toy is musical in that songs can be sung) and the at least one transducer produces a musical tone (paragraph 0080, lines 1-3).

Smirnov does not disclose the breath sensor assembly having an arrangement of a plurality of breath sensors placed in a channel.

Speasl discloses a breath sensor assembly having a plurality of breath sensors which may be placed in a channel and thus is protected from exposure to air (col. 6, lines 7-10).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the breath sensor arrangement as taught by Speasl, since such a modification would provide an alternate humidity sensor arrangement.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smirnov (US Patent Application Publication No. 2001/0041496) in view of Melzer et al. (US Patent No. 6,712,667).

Smirnov discloses the claimed invention except for a sounding accessory in the form of a pan flute

Melzer et al. teach a toy having a musical instrument in the form of a pan flute.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a sounding accessory in the form of a pan flute as taught by Melzer et al., since such a modification would make the toy more appealing to a child.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smirnov (US Patent Application Publication No. 2001/0041496) in view of Laurienzo (US Patent No. 6,224,455).

Smirnov discloses the claimed invention except for a sounding accessory in the form of a harmonica.

Laurienzo teaches a toy having a musical instrument in the form of a harmonica.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a sounding accessory in the form of a harmonica as taught by Laurienzo, since such a modification would make the toy more appealing to a child.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 23 above, and further in view of Chan (US Patent Application Publication No. 2002/0086607).

Smirnov, as modified by Speasl et al., lack the processor activating the speaker to produce output volume correlated with the quantity of breath.

Chan teaches a toy that provides a response depending on the quantity of breath (the quantity of breath is detected by a microphone which permits the doll to provide a whisper or non-whisper mode response, paragraph 0041).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an output volume depending on the quantity of breath, since such a modification would provide a more realistic simulation of human interaction.

Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 23 and 24 above, and further in view of Melzer et al. (US Patent No. 6,712,667).

Smirnov, as modified by Speasl et al., lack a sounding accessory in the form of a pan flute

Melzer et al. teach a toy having a musical instrument in the form of a pan flute.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a sounding accessory in the form of a pan flute as taught by Melzer et al., since such a modification would make the toy more appealing to a child.

Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 23 and 24 above, and further in view of Laurienzo (US Patent No. 6,224,455).

Smirnov, as modified by Speasl et al., lack a sounding accessory in the form of a harmonica.

Laurienzo teaches a toy having a musical instrument in the form of a harmonica.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a sounding accessory in the form of a harmonica as taught by Laurienzo, since such a modification would make the toy more appealing to a child.

Response to Arguments

In response to applicant's argument that the disclosure of Smirnov (US Patent Application Publication No. 2001/0041496) and Speasl et al. (US Patent No. 6,901,971) do not disclose each and every element of the claim, the examiner would like to point out that she does not agree with the applicant's assertion.

The terminology of a pending application's claims is to be interpreted as broadly as reasonably possible, *In re Zietz*, 893 F.2d 319, 13 USPQ2d 1320 (Fed. Cir. 1989), and anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter nor the recognition of inherent properties that may be possessed by the prior art reference, *Verdegaal Brothers, Inc. v. Union Oil Company of California*, 814 F.2d 628, 2 USPQ2d 1051 (Fed. Cir. 1987). A prior art reference anticipates the subject matter of a claim if every element set forth in the claim is found, either expressly or inherently described, in that reference. See *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 221 USPQ 385 (Fed. Cir. 1984). The law of anticipation does not require, however, that the reference teach what the applicant is claiming, but only that the claims "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference. See *Kalman v. Kimberly-Clark Corp.*,

713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983). In this case every element set forth in the claim 1 have been found in Smirnov (US Patent Application Publication No. 2001/0041496). Regarding claim 30, every element has been found in Speas et al. (US Patent No. 6,901,971).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 571-272-4420. The examiner can normally be reached on Monday through Friday, from 5:45AM-2:15PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene L. Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EUGENE KIM
SUPERVISORY PATENT EXAMINER